**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

**WRIT PETITION Nos.23483, 23664, 24714, 24936, 25188, 25648, 25762, 25989, 25990, 26333, 26721, 26821 of 1995 and 553 of 1996**

**Writ Petition No.23483 of 1995**

Between:

Employers' Federation of Southern India,
represented by its Secretary,
Madras (Chennai) and others. ... Petitioners

AND

Government of India,
represented by its Secretary,
Ministry of Labour, New Delhi and others. …Respondents

**Writ Petition No.23664 of 1995**

Between:

M/s.Andhra Cements Ltd.,
represented by its Vice-President (Finance),
Secunderabad. …. Petitioner

AND

Commissioner of Labour, Andhra Pradesh,
Hyderabad and others. …Respondents

**Writ Petition No.24714 of 1995**

Between:

M/s.Kesoram Cement,
represented by its Vice-President (Finance),
Basantnagar, Karimnagar District. …Petitioner

AND

Government of India, represented by

its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

**Writ Petition No.24936 of 1995**

Between:

M/s.Andhra Sinter Ltd.,
represented by its General Manager (Finance)-cum-
Secretary, Hyderabad. …. Petitioner

AND

Government of India, represented by
its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

**Writ Petition No.25188 of 1995**

Between:

Coromandel Fertilizers Ltd.,
represented by its Secretary,
Secunderabad. …. Petitioner

AND

Government of India, represented by
its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

**Writ Petition No.25648 of 1995**

Between:

Biological E. Ltd.,
represented by its Vice-President (HR & D),
Hyderabad. …. Petitioner

AND

Government of India, represented by
its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

**Writ Petition No.25672 of 1995**

Between:

M/s.Panyam Cements and Mineral Industries Ltd.,
represented by its Managing Director,
Hyderabad. …. Petitioner

AND

The Union of India, represented by
its Secretary, Ministry of Law, Justice and
Company Affairs (Legislative Department),
New Delhi and another. …Respondents

**Writ Petition No.25989 of 1995**

Between:

M/s.Chowgule Matrix Hobs Ltd.,
represented by its Executive Vice-President,
Patancheru, Medak District. …. Petitioner

AND

State of Andhra Pradesh, represented by
its Secretary, Labour, Secretariat,
Hyderabad and others. …Respondents

**Writ Petition No.25990 of 1995**

Between:

M/s.The Thana Electric Supply Co.Ltd.,
ETE Transformer Division,
represented by its General Manager (Operations),
Hyderabad. …. Petitioner

AND

State of Andhra Pradesh, represented by
its Secretary, Labour, Secretariat,
Hyderabad and others. …Respondents.

**Writ Petition No.26333 of 1995**

Between:

Hyderabad Industries Ltd.,
represented by its General Manager (Personnel),
Hyderabad. …. Petitioner

AND

Government of India, represented by
its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

**Writ Petition No.26721 of 1995**

Between:

Chitavalsa Jute Mills,
represented by its Vice-President (Admn.),
Chittivalasa, Visakhapatnam District. …. Petitioner

AND

Government of India, represented by
its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

**Writ Petition No.26821 of 1995**

Between:

M/s.Shriram Fuel Injection Industries,
represented by its Asst. General Manager(Admn.),
Hyderabad. …. Petitioner

AND

Government of India, represented by
its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

**Writ Petition No.553 of 1996**

Between:

M/s. Telangana Spinning & Weaving Mills Ltd.,

represented by its Commercial Officer,
Hyderabad. …. Petitioner

AND

Union of India, represented by
its Secretary, Ministry of Labour,
New Delhi and others. …Respondents

: **O R D E R** :

Counsel for the petitioner in W.P.Nos.23483, 24714, 25188, 25648, 26333, 26721 and 26821 of 1995: Ms. V.Uma Devi for Sri K.Srinivasa Murthy

Counsel for the petitioner in W.P.No.23664 of 1995: Sri V.Venkataramana

Counsel for the petitioner in W.P.No.24936 of 1995: Ms.Anjali Agarwal for Sri C.Kodandaram.

Counsel for the petitioner in W.P.No.25762 of 1995 : Sri P.Srinivas for Sri P.Sri Raghuram.

Counsel for the petitioner in W.P.Nos.25989, 25990 of 1995 and 553 of 1996. : None.

Counsel for respondent No.1 in W.P.Nos. 23483, 24714, 24936, 25188, 25648, 25762, 26333, 26721, 26821 of 1995 and 553 of 1996 and respondent No.2 in W.P.Nos.23664, 25989, 25990 of 1995. : Sri A.Rajashekar Reddy, Assistant Solicitor General.

Counsel for respondent Nos.2 and 3 in W.P.Nos.23483, 24714, 24936, 25188, 25648, 26333, 26721, 26821 of 1995 and 553 of 1996 and respondent Nos.1 and 3 in W.P.No.23664 of 1995, respondent No.2 in W.P.No.25762 of 1995, respondent No.1 in W.P.No.25989 and 25990 of 1995. : None.

Counsel for respondent No.4 in W.P.No. 23483 of 1995, respondent Nos.4 and 5 in W.P.No.23664, respondent No.3 in W.P.No.25989 of 1995. : None.

**June 04, 2007**

**Per G.S. Singhvi, CJ**

Whether Section 2 (13) of the Payment of Bonus Act, 1965, (hereinafter referred to as 'the 1965 Act'), as amended by Section 1(2) of the Payment of Bonus (Amendment) Act, 1995, is unconstitutional to the extent of retrospectivity and whether the petitioners are not liable to pay bonus in terms of amended Section 2 (13) read with amended Section 12 of the 1965 Act is the question, which arises for determination in these petitions filed under Article 226 of the Constitution of India.

For the sake of convenience, we have taken the facts from Writ Petition No.23483 of 1995, which has been filed by the Employers' Federation of Southern India and four others.

Petitioner No.1 is a registered company. It represents different industrial establishments operating in the southern States. Petitioner Nos.2 to 5 are members of petitioner No.1. Petitioner No.1 claims that its members, including petitioner Nos.2 to 5 have been paying bonus to the employees in accordance with the provisions of the Act. For the year 1993-94, all the employers are said to have paid bonus before the end of November, 1994 and settled their accounts. Some of the employers paid bonus more than the minimum 8.33% prescribed under Section 10, while others paid bonus in terms of that section.

The grievance of the petitioners is that by virtue of retrospective increase in the amount of salary or wages from Rs.2,500/- to Rs.3,500/- for the purpose of determination of eligibility of an employee to receive bonus, unbearable financial burden will be placed on them. According to the petitioners, retrospective amendment of the definition of "employee" contained in Section 2 (13) and the related provision contained in Section 12 is confiscatory in nature inasmuch as the same has the effect of taking away their property rights and, therefore,

the same is liable to be declared unconstitutional and struck down.

In the affidavit filed by Shri M.V. Ramakrishna, Honorary Secretary of petitioner No.1, it has been averred that some of the employers have already paid bonus over and above the minimum prescribed under Section 10 of the 1965 Act and if larger number of employees are treated eligible to receive bonus, the amount already paid to the employees will have to be reduced and recovered and this will lead to industrial unrest. The deponent has further averred that many employers have paid ex gratia to those employees who are not covered by the un-amended definition of the term "employee" and they may not agree to the adjustment of the amount of ex gratia towards the bonus, which will be payable to them in terms of amended Section 2 (13) read with Section 12. In paragraphs 8 and 9, Shri M.V. Ramakrishna has made general averments and in paragraphs 10 to 14, he has made averments regarding the amount of bonus and/or ex gratia paid to the employees of petitioner Nos.2 to 5. For the sake of convenience, paragraphs 8 and 9 of his affidavit are reproduced below:

> 8. It may be pointed out the scheme of the Payment of Bonus Act is that payment of bonus should be met out of the profit and schedules provide for calculation of allocable surplus and principle of set of and set on etc. for the purpose of arriving at the amount, which can be distributed as bonus. In case there are no profits or surplus is not adequate, Sec.10 provide for payment of minimum bonus of 8.33% and as has already been stated bonus will have to be paid within a period of 8 months from the end of accounting year. When the accounting year starts on 1st April and ends at 31st March bonus will have to be paid within 8 months commencing from 1st April of that year. For the year 1993-94 accounting year ended at 31.3.94 and the 8 months period for the payment expires on 30.11.94. The establishments have paid bonus which are payable within the stipulated time i.e. before the end of November 1994 and accounts have been settled. Now by virtue of the Amending Act which has come into force on 9.7.95 this revised bonus will have to be paid for the year 1993-94 which is clearly arbitrary

and it is impossible for compliance.

9. The petitioners do not have any funds available for making payment. Giving retrospective effect to the Amending Act is confiscatory in nature as it has the effect of taking away the property of the petitioners. This is arbitrary exercise of power which is not in public interest or has it been done with any purpose in view. As had been stated earlier, bonus which is considered payment from the profits and each year is taken as a unit and cannot be made use of for the purpose of extracting extra amounts from the company for obvious reasons. It upsets smooth running of the factory and has the effect of creating industrial unrest. If on the basis of allocable surplus a figure is arrived at and the amounts are distributed to the workmen concerned on the basis of law as it stood there by virtue of the amendment as fresh category of employees are added to the eligibility list and extra amount it has to be paid to those who had already been paid the same amount will have to be distributed to other employees also. That can be done only by taking back or recovering portion of the amounts given to the erstwhile eligible employees and reducing the percentage of bonus already paid. It will have the effect of creating industrial unrest. For example, if on the basis of allocable surplus bonus of 15% is paid to all the employees and now by inclusion of others eligible employees becoming more, bonus comes to only 10%. In order to make payments to the additional employees 5% of bonus, which has been paid in excess to the then existing eligible employees will have to be recovered from them. It will practically be impossible for the management to recover the sum which has already been paid to the employees as bonus on the basis of law as it stood then and no worker will be willing to part with the money which they have received and spent and no union will be in a position to sign a settlement on behalf of the workmen concerned for refund of the amount already received by the workmen. Management will have to look for the funds elsewhere in order to make payment as provided for in the amending Act and apart from that certain employees will have to be paid more i.e. 15% which was calculated on the basis of Rs.1600/- will have to be calculated on the basis of Rs.2,500/-. Payment of Bonus Act is a complete code by itself. This is something outside the purview of the Act. Payment of Bonus Act does not contemplate such a situation. Schedules decide the method and manner of making calculation on the

basis of profits arrived at which permissible deductions and it is from that the payment will have to be made. Schedules have not been amended. What is being demanded by the Amending Act is payments outside the purview of the Payment of Bonus Act. The Act does not contemplate such payments and this Amending Act only creates more problems and payments which are to be made will have to come out either from borrowings or from money set up for other purposes even though payments as per the law as stood prior to the amendment were paid. A further complication has been created by the amendment and the companies do not have funds to make payment and apart from that what is being asked to be paid is not bonus under the Act, but it is payment outside the Act for which there is no legal or statutory sanction behind it. It is nothing but unauthorised Act, and arbitrary in nature calling upon to make payment, which has the effect of not only effecting finances of the companies but also creating industrial unrest and complications in the working of the establishment."

Learned counsel for the petitioners led by Ms.V. Uma Devi argued that the impugned provisions are liable to be declared arbitrary and unconstitutional to the extent of retrospectivity because the same constitute unreasonable restriction on their right to trade and business guaranteed under Article 19 (1)(g) of the Constitution. Learned counsel further argued that the impugned amendment is confiscatory in nature and is liable to be struck down because implementation thereof will adversely affect the property right of the petitioners and place unbearable burden upon the employers who have already paid bonus for the year 1993-94. Learned counsel emphasized that even though the writ petitions have remained pending for more than 10 years, the respondents have not chosen to file counter-affidavits to controvert the factual matrix of the case and this should be treated sufficient for recording a finding that the impugned amendment is arbitrary and unreasonable. In support of this argument, the learned counsel relied on the judgment of the Supreme Court in **D.S.Nakara v. Union of India**[1], **Polichem Ltd. v. State of Maharastra**[2]. Learned

counsel then argued that the impugned provision is liable to be struck down because it has the effect of compelling the employer to violate the scheme of the Act, which postulates payment of bonus before the end of the month of November of the particular year. They emphasized that all the petitioners have paid bonus to the eligible employees for the year 1993-94 and settled their accounts, and argued that after lapse of more than one year, they cannot be compelled to pay bonus to additional set of employees. Ms. Uma Devi pointed out that if the bonus is required to be paid to the employees drawing salary or wages up to Rs.3,500/-, the employers will have to recover the amount already paid to the eligible employees as per the allocable surplus and also adjust the amount of ex gratia paid to the ineligible employees and argued that this will result in unwarranted industrial unrest.

Learned Assistant Solicitor General relied on the judgment of the Supreme Court in **Entertainment Tax Officer v. Ambae Picture Palace**[3] and argued that failure of the Government of India to file counter-affidavit cannot, by itself, be made a ground for declaring the impugned provision unconstitutional. He then argued that the definition of the "employee" was amended keeping in view the change in the salary structure of the employees/officers of various cadres and the fact that with the increase in wages, large number of employees got excluded from the definition contained in Section 2 (13) of the Act.

We have given serious thought to the entire matter. A study of the developments which led to the enactment of the 1965 Act shows that in India, the industrial employees made claim for bonus after commencement of the First World War when, as a result of inflationary trends, there arose considerable disparity between the living wage and the contractual remuneration earned by the workmen in the textile industry. The employers paid to the workmen increase in wages by describing it as "war bonus". Later on, it was called as a "special allowance". A Committee appointed by the Government of Bombay in 1922 to consider, inter alia, "the nature and basis" of this bonus

payments, reported that the workmen had a just claim against the employers to receive bonus but the claim was not "customary, legal or equitable". During the Second World War the employers in the textile industry granted cash bonus equivalent to a fraction of actual wages (not including dearness allowance) but even this was a voluntary payment made with a view to keep labour contented.

In the dispute for payment of bonus for the years 1948 and 1949 in the textile industry in Bombay, the Industrial Court expressed the view that since labour as well as capital employed in the industry contribute to the profits of the industry, both are entitled to claim a legitimate return out of the profits of an establishment, and evolved a formula for charging certain prior liabilities on the gross profits of the accounting year, and awarding a percentage of the balance as bonus to the workmen. In adjudicating upon the claim for bonus, the Industrial Court excluded establishments which had suffered loss in the year under consideration from the liability to pay bonus. In appeals against the award relating to the year 1949, the Labour Appellate Tribunal broadly approved of the method for computing bonus as a fraction of surplus profit.

According to the formula which came to be known as the "Full Bench Formula", surplus available for distribution had to be determined by debiting the following prior charges against gross profits:

(1) Provision for depreciation;
(2) Reserve for rehabilitation;
(3) Return of 6 per cent on the paid-up capital ;
(4) Return on the working capital at a lower rate than the return on paid-up capital ;

and from the balance called `available surplus" the workmen were to be awarded a reasonable share by way of bonus for the year.

The “Full Bench Formula” was considered in **Muir Mills Co. Ltd. v. Suti Mills Mazdoor Union, Kanpur**[4]; **Baroda Borough**

**Municipality v. Its Workmen**[5]; **Sree Meenakshi Mills Ltd. v. Their Workmen**[6] and **State of Mysore v. Kolar Gold Mines**[7]. The Supreme Court did not accept the "Full Bench Formula" in its entirety, but held that bonus is not gratuitous payment made by the employer to his workmen, nor a deferred wage, and that where wages fall short of the living standard and the industry makes profit, part of which is due to the contribution of labour, a claim for bonus may be legitimately made by the workmen.

In 1961, the Government of India set up a Commission to define the concept of bonus, to consider the question of payment of bonus based on profits and to recommend principles for computation of such bonus and methods of payment, to determine what the prior charges should be in different circumstances and how they should be calculated, to consider whether there should be lower limits irrespective of losses in particular establishments and upper limits for distribution in one year, and if so, the manner of carrying forward profits and losses over a prescribed period, and to suggest appropriate machinery and method for settlement of bonus disputes. The Commission made elaborate enquiry and submitted report to the Government with several recommendations. The Government of India accepted a majority of the recommendations and the President issued on May 29, 1965 the Payment of Bonus Ordinance, 1965, providing for payment of bonus to all employees drawing salary not exceeding Rs.1600/- under the formula devised by the Commission. It is not necessary to set out the provisions of the Ordinance, for the Ordinance was replaced, by the Payment of Bonus Act 21 of 1965 and by Section 40 (2) it was provided that notwithstanding such repeal, anything done or any action taken under the Payment of Bonus Ordinance, 1965, shall be deemed to have been done or taken under the Act as if the Act had commenced on May 29, 1965. Since the action taken under the Ordinance is to be deemed to have been taken under the Act, in these

cases validity of the provisions of the Act alone need be considered.

It is, thus, evident that bonus, which was originally a voluntary payment out of profits to workmen to keep them contented, acquired the character, under the bonus formula, of right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the 1965 Act, liability to pay bonus has become a statutory obligation imposed upon the employer covered by the Act.

The definition of the "employee" contained in the original enactment was as under:

> "**2. Definitions**. In this Act, unless the context otherwise requires,-
>
> … … …
>
> (13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding one thousand and six hundred rupees" per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied;"

In 1985, the definition of "employee" was amended by the Payment of Bonus (Amendment) Act, 1985. That amendment was given effect for the accounting year commencing on any day in the year 1984. The amended definition of the "employee" was as under:

> "**2. Definitions**. In this Act, unless the context otherwise requires,-
>
> … … …
>
> (13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding two thousand and five hundred rupees" per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied;"

With the passage of time, the cost of living increased manifold necessitating increase in the wages payable to almost all categories of employees including those who are covered by the definition of "workman" under Section 2 (s) of the Industrial Disputes Act, 1947. As

a result of this, the eligibility criteria enshrined in Section 2 (13) read with Section 12 of the 1965 Act became redundant and large number of employees became ineligible to receive bonus. Therefore, the trade unions and individual employees represented to the Central Government to revise the eligibility criteria by increasing the quantum of wages specified in the definition of the term 'employee' and Section 12. The Central Government considered the demand made by the employees and amended Section 2 (13) by the Payment of Bonus (Amendment) Ordinance, 1995, which was promulgaged on 9.7.1995 and made effective from 1.4.1993. Subsequently, the Ordinance was replaced by the Payment of Bonus (Amendment) Act, 1995. The statement of objects and reasons incorporated in the Bill introduced in the Parliament and the amended provisions read as under:

"**Statement of objects and reasons:**

The Payment of Bonus Act, 1965 provides payment of bonus to employees under the Act. According to clause (13) of Section 2 of the Act, "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding two thousand and five hundred rupees per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward whether the terms of employment be express or implied. However, according to Section 12 of the Act, the bonus payable to an employee whose salary or wage exceeds one thousand and six hundred rupees per mensem has to be calculated as if his salary or wage was one thousand and six hundred rupees per mensem. The Central Government has been receiving representations from trade unions, individuals and various associations for enhancement or for removal of the above ceilings. After due consideration, the Government decided to enhance the eligibility limit for payment of bonus from Rs.2,500/- per mensem to Rs.3,500/- per mensem and the calculation ceiling from Rs.1,600/- per mensem to Rs.2,500/- per mensem. The Payment of Bonus (Amendment) Ordinance, 1995 was promulgated on the 9$^{th}$ July, 1995 to amend the said Act to enhance the ceiling limit.

Amended Sections 2 (13) and 12 of the 1965 Act also read as under:

**2 Definitions**. In this Act, unless the context otherwise requires,-

… … …

(13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding (three thousand and five hundred rupees") per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied;

**12. Calculation of bonus with respect to certain employees:**

Where the salary or wage of an employee exceeds two thousand and five hundred rupees per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were two thousand and five hundred rupees per mensem."

The petitioners have not challenged the competence of the Parliament to enact the 1965 Act or amend the same. Their only grievance is qua the retrospective enforcement of the amended Section 2 (13).

The legislature's power to enact law with retrospective effect has become subject matter of several judicial pronouncements and it must be treated as settled law that if the legislature is competent to legislate on a particular subject, it can do so prospectively as well as retrospectively. I n **Union of India v. Madan Gopal Kabra**[8]; **Krishnamurthi & Co. v. State of Madras**[9]; **Rai Ramkrishna v. State of Bihar**[10] and **Entertainment Tax Officer v. Ambae Picture Palace** (supra), the Supreme Court has repeatedly held that the power vested in the legislature to enact law on a particular subject includes the power to enact new statute or amend an existing statute with retrospective effect. In the last mentioned case, the Supreme Court reversed the judgment of this Court, which had struck down Section 4 of the Andhra Pradesh Entertainments Tax Act, 1939, as substituted by the Andhra Pradesh Entertainments Tax (Amendment) Act, 1985, on the ground that the respondent had not explained the rationale of

retrospectivity and observed:

> "16. Though it is not for the State to justify or explain the necessity for the amendment even in relation to retrospectivity of the Act but obviously, on the face of it, there appeared to be a change of policy by a succeeding Government on the policy pursued by its predecessor. Surely the successor Government can have different rules from their predecessor including the matters relating to taxation or mode of taxation or basis of taxation or objects of taxation etc. No explanation was required from the State for the amending Act having retrospective effect."

In the light of the above, we shall now consider whether retrospective enforcement of the amended definition of employee is violative of Article 19(6) of the Constitution or is liable to be struck down by being declared as arbitrary.

At the cost of repetition, we consider it appropriate to observe that the definition of the term 'employee' (as originally enacted) took within its fold only those persons (other than apprentices) whose salary or wages did not exceed Rs.1600/- per month. On account of increase in the prices and the consequential increase in the cost of living, the Parliament amended the 1965 Act by the Payment of Bonus (Amendment) Act, 1985. The amended definition of the employee covered those persons whose salary or wages did not exceed Rs.2500/- per month. In the next ten years, the cost of living registered a steep increase necessitating upward revision in the pay structure of all the employees including those employed in the industrial establishments. This, as mentioned above, made the amended definition of the term 'employee' redundant, inasmuch, as majority of the employees who were earlier eligible to receive bonus were rendered ineligible. As a necessary concomitant, the trade unions and employees represented for modification of the eligibility limit. Their efforts yielded result when the Government promulgated the Payment of Bonus (Amendment) Ordinance, 1995, which, as mentioned above, was replaced by the Payment of Bonus (Amendment) Act, 1995.

While doing so, the Central Government and the legislature kept in view the fact that the demand of the employees was pending for long time and made the amendment applicable with effect from 1-4-1993. The statement of objects and reasons incorporated in the Bill, which led to the enactment of the Amendment Act shows that the Parliament was aware of the fact that because of the rise of the price and living index and upward revision of the pay scales, increase in the limit of wages specified in the definition of employee had become imperative. Therefore, it is not possible to agree with the learned counsel for the petitioners that the impugned amendment is arbitrary.

Although the respondents have not disclosed the rationale of retrospective enforcement of the amended definition of employee, we do not find any justification to strike down the same by applying the ratio of the judgments of the Supreme Court in **D.S. Nakara v. Union of India** or **Polychem Ltd. v. State of Maharashtra** (supra). We can take judicial notice of the fact that the retrospective amendment was necessitated to meet the ever growing demand of the workers, who were made ineligible to receive bonus on account of revision of the wage structure. Indeed, it is not even the pleaded case of the petitioners that on account of upward revision of the pay structure and wages, substantial number of employees had been rendered ineligible to receive bonus. This shows that for a considerable period, the industry was not paying bonus to the employees who were earlier covered by the definition contained in Section 2 (13). Therefore, they cannot complain of the retrospectivity given to the amended definition of the term 'employee'.

In **Lucknow Development Authority v. M.K. Gupta**[11], the Supreme Court held that while construing a social benefit-oriented legislation, the primary duty of the court is to adopt a constructive approach and interpret the same in favour of the beneficial purpose sought to be achieved by the enactment.

In **Mithilesh Kumar and another v. Prem Behari Khare**[12], it has been held that every law that impairs or takes away rights vested agreeably to existing law is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individual and the community as a whole may relate to time antecedent to their commencement.

The argument of the learned counsel for the petitioners that they had not only paid bonus to the employees, but also paid ex gratia to other employees and, therefore, they should not be saddled with the liability to pay bonus to a larger section of the employees merits rejection because it is well settled that ex gratia is always paid as an incentive to the employees for their past productive activities – **Coffee Boarad Employees' Association v. A.C. Shiva Gowda**[13]. Reference, in this connection, may also be made to the Division Bench judgment of the Rajasthan High Court in **R.F.C. Officers Association v. R.F.C.**[14], wherein it was held that ex gratia payment to an employee cannot be treated as bonus.

The apprehension expressed by the petitioners that on account of retrospective applicability of amended Section 2 (13), they may be compelled to violate the scheme of the 1965 Act is based on a misconceived assumption that they may be subjected to prosecution because it is nobody's case that the respondents have initiated action against any of the petitioners on the charge of non-compliance of the provisions of amended Section 2 (13) read with Section 12.

In view of the above discussion, we hold that the impugned amendment does not suffer from any constitutional infirmity and the writ petitions are liable to be dismissed. Ordered accordingly.

**G.S. SINGHVI, CJ**

4th June, 2007

**C.V. NAGARJUNA REDDY, J**

SVS

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[1] AIR 1983 SC 130
[2] (1998) 6 SCC 196
[3] (1994) 1 SCC 209
[4] AIR 1955 SC 170
[5] AIR 1957 SC 110
[6] AIR 1958 SC 153
[7] AIR 1958 SC 923
[8] AIR 1964 SC 158
[9] (1973) 1 SCC 75
[10] AIR 1963 SC 1667
[11] AIR 1994 SC 787
[12] AIR 1989 SC 1247
[13] (1992) 1 SCC 500
[14] 1989 (1) RLR 820